IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-874

GENANETT ALEXANDER, *et al*,
Petitioners

vs.

UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, *et al.*,
Respondents

ON A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR PETITIONERS

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OPINIONS BELOW

The opinion of the Court of Appeals for the Seventh Circuit is reported at 555 F.2d 166, and is printed in the Petition for a Writ of Certiorari at pages A6-A16. The order of the court of appeals denying appellants' Petition for Rehearing *En Banc* is printed in the Petition for a Writ of Certiorari at pages A17-A18. The judgment of the United States District Court for the Southern District of Indiana is

unreported, and is printed in the Petition for a Writ of Certiorari at pages A1-A6.

JURISDICTION

The judgment of the court of appeals was entered on May 20, 1977. The order of the court of appeals denying appellants' Petition for Rehearing *En Banc* was entered on September 19, 1977. The petition for a Writ of Certiorari was filed on December 16, 1977, and the petition was granted on June 19, 1978. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1). On July 7, 1978, the Clerk of the Court extended the time for filing the opening brief to September 5, 1978.

STATUTORY PROVISIONS INVOLVED

Section 101(6) of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 84 Stat. 1894, 42 U.S.C. §4601(6), provides:

> The term "displaced person" means any person who, on or after the effective date of this Act, moves from real property, or moves his personal property from real property, as a result of the acquisition of such real property, in whole or in part, or as the result of the written order of the acquiring agency to vacate real property, for a program or project undertaken by a Federal agency, or with Federal financial assistance;. . . .

QUESTION PRESENTED FOR REVIEW

Whether tenants who reside in a housing project acquired by the United States Department of Housing and Urban Development [HUD] and who are ordered by HUD to vacate their residences so HUD can implement its property disposition program are "displaced persons" under Section 101(6) of the Uniform Relocation Assistance and Real Property Acquisition Policies Act, 42 U.S.C. §4601(6), and thus entitled to relocation assistance.

STATEMENT OF THE CASE

Petitioners (hereinafter "tenants") are low and moderate income persons who formerly resided at Riverhouse Towers Apartments (hereinafter "Riverhouse"), a 294-unit complex located in Indianapolis, Indiana [A.20,28]. Riverhouse originally was constructed by a non-profit corporation, Riverhouse Apartments, Inc., which secured permanent financing for the complex through a mortgage insured and subsidized by HUD under Section 221 (d) (3) of the National Housing Act as amended, 12 U.S.C. §1715*l* (d) (3) [20-21, 28]. Like all Section 221 (d) (3) housing, Riverhouse was constructed for the purpose of providing decent housing for low and moderate income persons, and particularly those who were displaced by governmental action.

In July, 1970, shortly after the buildings were constructed, the owner defaulted on its mortgage, and in December, 1970, the mortgagee assigned the mortgage to HUD in exchange for receipt of mortgage insurance proceeds. [A.21, 28]. During this period, HUD took a relatively passive role with respect to the operation of the project, choosing instead to work with the owner in attempting to cure its default. [Deposition of Rae Ginger, page 10, Ques. No. 47] However, in the face of a continuing default by the owner, the United States initiated foreclosure proceedings in the United States District Court in May, 1973 [A.21, 28], and during the pendency of that suit the property was operated by a court-appointed receiver. [Pet. App. A2]. On June 6, 1974, a decree of foreclosure was entered, ordering that Riverhouse be sold by the United States Marshal, with proceeds to be applied to the balance due on the mortgage, and costs. [A.21, 28]. On August 13, 1974, Riverhouse was offered for sale pursuant to the Court order, and HUD purchased the property on that date. [A.21, 28-29].

Upon purchase, HUD became actively involved in the operation of Riverhouse and hired a management agent to manage all aspects of the property. It instructed the agent to lease as many apartments as possible, to evaluate the nature and extent of the repairs needed, and to ask for authorization to complete them. [Deposition of Rae Ginger, P. 28, Ques. Nos. 160-162]. At the same time, in accordance with its *Property Disposition Handbook—Multi-family Properties*, RHM 4315.1 (1971), HUD began its own evaluation of the future of Riverhouse by analyzing the general condition of the buildings, their history, the nature of the surrounding community, the housing needs of the city's low and moderate income population, and the like. [A.44-47]. This evaluation culminated in what HUD termed the "First Narrative Report" and the "Third Narrative Report" which made recommendations for the future use of the property. Although HUD had broad authority under 12 U.S.C. §1713 *l* to renovate, modernize and manage the property, or, in the alternative, to rehabilitate and sell it to a private developer or public housing authority, HUD chose to evict the tenants,[1] close the buildings, and retain ownership with an eye towards sale. [Deposition of Rae Ginger, p. 34, Ques No. 195; p. 35, Ques. No. 201; p. 53, Ques. Nos. 303-304]. In closing Riverhouse, HUD imposed the financial burden of relocation upon the tenants, and, indeed, HUD provided

[1] The letters ordering the tenants to vacate read as follows:

> We regret to inform you that we [management agent] have been advised by the Department of Housing and Urban Development, that due to the unsafe conditions of the buildings, it has become necessary to close Riverhouse Towers Apartments.
>
> All residents must vacate the premises by December 31, 1974.
>
> We are sorry for any inconveniences; if we can be of any assistance to you in relocating, please feel free to contact our office, telephone 635-3371.
>
> Thank you in advance for your cooperation.

the tenants with no relocation assistance whatsoever. [A.7-14].

In June, 1977, HUD placed Riverhouse on the market for sale, and on July 13, 1977, HUD entered into a contract to sell the complex to a private party. The transfer of title was suspended, however, so that the HUD Area Office could re-evaluate its decision to sell in light of new property disposition regulations adopted by HUD in January, 1977, found in 24 C.F.R. Part 290. After completing the review required by the new regulations, HUD again decided to sell the property, and title was transferred on January 30, 1978.[2]

SUMMARY OF THE ARGUMENT

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. §§4601-38 mandates federal agencies to provide relocation assistance to any "displaced person." Under the Act, a displaced person is anyone who is required to move *either* (a) as a result of the acquisition of property for a program or project undertaken by a federal agency or with federal financial assistance; or (b) as a result of a written order by the acquiring agency to vacate real property for a program or project undertaken by a federal agency or with federal financial assistance. Eligible persons are entitled to a dislocation allowance and moving expenses (42 U.S.C. §4622); relocation assistance, which includes an assurance that decent, affordable replacement housing is actually available (42 U.S.C. §4626); and replacement housing payments in the event that the only replacement housing is at higher than affordable prices (42 U.S.C. §4624).

[2] These facts are brought to the attention of the court by agreement between the parties and are set forth in the HUD letter reproduced in the addendum to this brief.

The tenants are eligible for Relocation Act assistance since they are "displaced persons" within the plain meaning of 42 U.S.C. §4601(6). In short, they were required to move from their homes by virtue of written orders from HUD's management agent after HUD acquired Riverhouse at a foreclosure sale. Further, the orders to vacate were issued in connection with a federal program, *viz.* the HUD Property Disposition Program found in the HUD *Property Disposition Handbook — Multi-family Properties*, RHM 4315.1 (1971). Because they meet the plain meaning of the statute, and because the underlying policies of the Relocation Act are served by a finding of their eligibility, the tenants are entitled to the full range of benefits provided by the Relocation Act.

ARGUMENT

I.

HUMANITARIAN CONCERNS FOR THE PERSONAL HARDSHIPS CAUSED BY UNASSISTED DISPLACEMENT AND THE INEQUITIES CAUSED BY NON-UNIFORM FEDERAL RELOCATION PROVISIONS DOMINATED CONGRESSIONAL DELIBERATIONS AND COMMAND A CONSTRUCTION OF THE ACT WHICH IS FAITHFUL TO ITS PLAIN LANGUAGE.

The Uniform Relocation Assistance And Real Property Acquisition Policies Act of 1970, 42 U.S.C. §§4601-38 (hereinafter "Relocation Act") was enacted by Congress in 1970 following a decade of legislative activity on the issue of government-caused displacement. Two concerns dominated those deliberations: 1) that the hardships imposed by unassisted relocation should be relieved where federal activities cause displacement; and 2) that the disparities in the various government relocation policies and provisions were unjust. These concerns focused upon the *victims* of displacement and together they gave rise to twin themes found in the Relocation Act—adequate assistance and uniformity. Hence, the simply stated policy of the Act:

> The purpose of this subchapter is to establish a uniform policy for the fair and equitable treatment of persons displaced as a result of Federal and federally assisted programs in order that such persons shall not suffer disproportionate injuries as a result of programs designed for the benefit of the public as a whole.

42 U.S.C. §4621.

Prior to the enactment of the Relocation Act, the first serious effort to confront the severe hardship of displacement is found in the Housing Act of 1954, which provided financial assistance for building low-cost housing for displaced families.[3] The Senate Report on the Housing Act of 1954 emphasized Congress' concerns for persons displaced by urban renewal and other forms of government action by stating:

> Eligible displaced families would include families which are required to move because of *any form of governmental action*, such as land acquisition by a public body, *closing or vacating of dwellings by public officials* or the eviction of families from public housing because of their income. (emphasis added)

Senate Report No. 1472, 83d Cong., 2d Sess., *reprinted in* 1954 U.S. Code Cong. & Adm. News, at 2748.[4] The breadth of concern at this early stage of Congressional consideration of displacement is instructive as well as prophetic. The hardships suffered by those ordered to vacate their homes by the closing of occupied government

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[3] In 1935 Congress gave (the Tennessee Valley Authority) jurisdiction to "advise and cooperate" (but not make payments) in the "readjustment" of people displaced. TVA Act of 1933, as amended, Pub. L. 412, 49 Stat. 1075, 1080 (1935). In 1951, military departments were authorized to pay moving costs when land was acquired for military projects. Act to Authorize Certain Construction of Military and Naval Installations etc., §501(b) Pub. L. 155, 65 Stat. 364 (1951).

[4] It would be particularly anomalous if the Riverhouse tenants were relegated to suffering the costs of relocation because of HUD's decision to force them from their homes. Riverhouse was constructed pursuant to §221(d) (3) of the Housing Act of 1961, 12 U.S.C. §1715 *l*(d) (3), a later modification of the 1954 provision. Section 221(d) (3) was also designed in specific part to house displaced persons. See, 12 U.S.C. §1715 *l*(a), 1715 *l*(d) (3) (iii), 1715 *l*(f). Indeed, it would be particularly ironic if persons displaced from housing which was specially built to relocate displaced persons (as Riverhouse was), could receive no relocation assistance when forced to leave by the government.

property are the same as those imposed upon persons who vacate for construction of a public facility, and Congress recognized that assistance in relocating should be provided in each instance.

Shortly after the passage of the Housing Act of 1954, Congress passed a number of acts designed to provide relief to persons displaced by a variety of governmental actions.[5] These acts provided relief on a program-by-program basis and the relief varied greatly in terms of eligibility for, and the amount of, relocation assistance.

By 1961, Congress realized that its earlier efforts to provide relocation assistance had not been adequate and that major inequities had resulted from the amalgam of relocation laws. The House of Representatives created the Select Subcommittee on Real Property Acquisition of the Committee on Public Works to study these programs. Hearings were held, and the report of the Subcommittee[6], which became a principal reference in subsequent deliberations[7], discussed and documented a wide range of

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[5] For example: Housing Act of 1956, §305, Pub. L. 1020, 70 Stat. 1091, 1100 (1956) (urban renewal); Landowners and Tenants — Lands Acquired For Water Conservation etc. — Reimbursement for Moving Expenses, etc., Pub. L. 85-433; 72 Stat. 152 (1958). Others arose in the 1960's. For example: Federal-Aid Highway Act of 1962, §5, Pub. L. 87-866; 76 Stat. 1145 (1962); Urban Mass Transportation Act of 1964, §7, Pub. L. 88-365; 78 Stat. 302 (1964); Housing Act of 1964, §§401, 405, 406, 76 Stat. 1145 (1964) (public housing).

[6] House Comm. on Public Works, *The Study of Compensation and Assistance for Persons Affected by Real Property Acquisition in Federal and Federally-Assisted Programs*, 88th Cong., 2d Sess. (Comm. Print No. 13, 1964) (hereinafter "Study of Compensation")

[7] *See*, for example, references to the *Study of Compensation* in 111 Cong. Rec. 6532-6533 (1965) (remarks of Sen. Edmund Muskie introducing S.1681); Hearings on H.R. 14898, H.R. 14899, S.1 and Related Bills Before the House Comm. on Public Works, 91st Cong. 1st and 2nd Sess. (1970) p. 2 (hereinafter "House Hearings on S.1") (remarks of Rep. Fallon introducing S.1).

displacements resulting from governmental acquisitions, reached multiple conclusions on how to treat the problem, and prepared a draft uniform relocation act based upon its conclusions. Among its findings were the following:

> The amount of disruption caused by Federal and federally assisted programs is astoundingly large. The accelerated pace of Government activity,...make(s) any lessening of current activity in the foreseeable future highly unlikely.
>
> * * *
>
> Most displacements affect low-or moderate-income families or individuals, for whom a forced move generally is a very difficult experience. The problem is aggravated for the elderly, the large family, and the non-white displacee. The lack of standard housing at prices or rents that low or moderate income families can afford is the most serious relocation problem.
>
> * * *
>
> ...There are vast differences in the relocation provisions of the various programs. The scope or amount of the relocation payment or the assistance provided for a displaced person frequently depends more on the program involved than the loss suffered.
>
> * * *
>
> Concern for the effects of displacement by Government action is consistent with the policy of the Nation to assure economic and social opportunity for every citizen. Economic costs of displacement should be borne by the public on a uniform basis in all programs.... A broad range of relocation services and other assistance should be provided for all program displacees, consistent with their needs.[8]

Concurrently, the Senate reviewed the injustices caused by the various relocation programs as they affected elderly citizens.[9]

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[8] *Study of Compensation, supra,* at pp. 105, 106, and 112.

[9] *See,* Hearings before Subcomm. on Involuntary Relocation of the Elderly, Special Comm. on Aging, U.S. Senate, 87th Cong., 2d Sess., (1962).

Thus, by 1965, both houses of Congress had begun to consider the inadequacy and non-uniformity of relocation assistance, and the first uniform bills were introduced.[10] In the hearings on each of the bills, the dual themes of inadequate and inconsistent treatment of persons displaced by the government were constantly reiterated. In his introductory remarks to the hearings on S.1 (which later became the Relocation Act), Senator Muskie poignantly stated the policy concerns of all who testified in support of the uniform relocation bills as he briefly traced the history of deliberations on those bills:

> Mr. President, a major item of unfinished business which should be accorded highest priority in this new Congress is the passage of legislation assuring consistent and fair treatment of those who are uprooted from their homes and places of business by projects carried out by the Federal Government and by State and local governments with Federal assistance. That is the purpose of the bill I am introducing today.
>
> ...[1968 Senate hearings] demonstrated in intensely human terms the shattering effects of the displacement of people from their homes, their neighborhoods, their businesses to make way for public projects. They brought out clearly the confusion and inequities caused by the diversity and inadequacy of the measures available to public agencies to reduce the hardships of displacement.
>
> ...[The 1962-64 House Select Sub-Committee] rendered its monumental report in 1964. It showed conclusively and in detail the inequities and hardships suffered by hundreds of thousands of families, businessmen, and farmers for the sake of projects intended to benefit the public as a whole.

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[10] *See,* S.1201, S.1681, H.R. 10212, and H.R. 11869, all introduced in 1965.

> ...It is imperative that the Government of the United States deal consistently and fairly with all those whose property is taken for public projects and all those who are displaced from their homes and their businesses. When called upon to make this adjustment in their personal lives for the public good, such persons must be able to turn to the responsible agency, whether of a local government, the State, or the Federal Government, and be assured of the help they need to reestablish themselves in homes or places of business no less satisfactory than those they were forced to leave.

115 Cong. Rec. 772 (1969).

From the 89th Congress through the 91st Congress, these dual themes were not only reiterated; they provided the impetus for change after change in the Act which consistently extended its coverage and broadened the nature and amount of benefits. By the date of final passage of S.1, most provisions had been liberally expanded from their S. 1681 origin in 1965. For example, maximum moving expenses were increased (from $200 to $300 for individuals and families, from $5,000 to $10,000 for businesses, and from $1,000 to $10,000 for farm operators);[11] replacement housing allowances were expanded (from $1,000 to $4,000 for tenants and from $1,000 to $15,000 for owners);[12] the provision that benefits be discretionary in federally-assisted programs was amended to make such benefits mandatory;[13] a new provision was added requiring federal agencies to supply adequate replacement housing where such housing was not available;[14] and a section was added to provide that relocation benefits would not be considered income for either tax or Social Security eligibility purposes.[15]

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[11] *Compare* §3 of S.1681 (1965) with 42 U.S.C. §4622.

[12] *Compare* §3 of S.1681 (1965) with 42 U.S.C. §§4623, 4624.

[13] *Compare* §8 of S.1681 (1965) with 42 U.S.C. §4630

[14] From no provision in S. 1681 (1965) to 42 U.S.C. §4626.

[15] From no provision in S.1681 (1965) to 42 U.S.C. §4636.

Furthermore, as Congressmen expressed concern about particular situations, the original bill was expanded to ensure coverage. For example, Senator Baker's concern for displacements of outdoor advertising became covered in 42 U.S.C. §4601(7) (D);[16] Representative Koch's concern for a special New York City situation is the subject of uncodified Section 219 (84 Stat. 1894, 1903);[17] Senator Tyding's concern for displaced "mom and pop" stores was covered in §4622(c);[18] and Representative Cleveland's concern for major New Hampshire landowners who, because of the scarcity of land, might have difficulty relocating, was answered by 42 U.S.C. §4638.[19]

The hallmark of the Relocation Act, then, was to provide uniform and fair treatment of all persons forcibly displaced to serve the public good. From the introduction of the first uniform bills to the passage of the Act, these dual concerns were voiced in hearings and in floor debates, by senators[20] and representatives[21] of both parties across the

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[16] Hearings on S.1 Before the Subcomm. on Intergovernmental Relations of the Senate Comm. on Government Operations, 91st Cong. 1st Sess. (1969), pp. 253-254 (hereinafter "Senate Hearings on S.1").

[17] Senate Hearings on S.1 at pp. 164-169; House Hearings on S.1 at pp. 65-69.

[18] Senate Hearings on S.1 at pp. 78-83.

[19] 116 Cong. Rec. 40169 (1970).

[20] For example: Sen. Tydings (Dem. Md.), 115 Cong. Rec. 31534 (1969); Sen. Percy (Rep. Ill.), 116 Cong. Rec. 42138-42139 (1970); Sen. Bible (Dem. Nev.) Senate Hearings on S.1, p. 254; Sen. Sparkman (Dem. Ala.), Hearings on S.1201 and S.1681 Before Subcomm. on Intergovernmental Relations of the Senate Comm. on Government Operations, 89th Cong. 1st Sess. (1965), pp. 56-61 (hereinafter "Senate Hearings on S.1201"); Sen. Robert Kennedy (Dem. N.Y.), Senate Hearings on S.1201, pp. 61-64; Sen. Miller (Rep. Iowa), Hearings on S.698, S.735, S.458, and S.2981 Before Subcomm. on Intergovernmental Relations of Senate Comm. on Government Operations, 90th Cong., 2d Sess. (1968), pp. 133-134 (hereinafter "Senate Hearings on S.698").

[21] For example: Rep. Gonzalez (Dem. Tenn.), House Hearings on S.1, pp. 110-111; Rep. Green (Rep. Ore.), House Hearings on S.1, pp. 58-62; Rep. Horton (Rep. N.Y.), House Hearings on S.1, pp. 114-115;

country, by local officials[22] and federal officials,[23] by presidents of the United States,[24] and by private organizations.[25] These deep concerns formed the seminal basis for the Act's most important provisions.

> This legislation...provides a humanitarian program of relocation payments, advisory assistance,

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Rep. Jacobs (Dem. Ind.) 116 Cong. Rec. 40167 (1970); Rep. Dwyer, (Rep. N.J.), Hearings on S.561 *et al.* Before House Committee on Governmental Operations,89th Cong., 2d Sess. (1966) pp. 213, 216-217 (hereinafter "House Hearings on S.561").

[22] For example: Mayor Thomas D. Alesandro, III (Mayor of Baltimore and representing the National League of Cities and the U.S. Conference of Mayors) Senate Hearings on S.1, pp. 84-95. Hon. John A. Volpe (Governor of Massachusetts) Senate Hearings on S.698, pp. 480-482. Hon. Chuck Hall, (Mayor of Dade County, Florida and representing the National Association of Counties) Senate Hearings on S.1201, pp. 99-104.

[23] For example: Lawson B. Knott (Administrator, General Services Administration) Senate Hearings on S.1, pp. 172-185. Richard C. VanDusen (Undersecretary, Department of HUD) House Hearings on S.1, pp. 1025-1036. Robert Weaver (Secretary, Department of HUD) Sen. Hearings on S.698, pp. 393-410, esp. 398-399. Harold Seidman (Ass't Director for Management and Organization, Bureau of the Budget) House Hearings on S.561, pp. 307-313, esp. p. 312.

[24] President John Kennedy, *reported in* Advisory Comm. on Intergovernmental Relations, *Relocation: Unequal Treatment of People and Businesses Displaced by Governments* (1965), p. 66. President Lyndon Johnson, 110 Cong. Rec. 1156 (1964). President Richard Nixon, 7 Weekly Comp. of Presidential Documents (1971), pp. 14-15.

[25] For example: Clarence Mitchell (Director, Washington Bureau, NAACP). Senate Hearings on S.1201 and S.1681, pp. 236-240. William Slayton, (Executive Vice President of American Institute of Architects) House Hearings on S.1, pp. 285-289. William L. Rafsky (President, National Association of Housing and Redevelopment Officials) Senate Hearings on S.698, pp. 275-280. Mrs. Barbara Reach (Community Service Society, New York, N.Y.) House Hearings on S.1, pp. 336-348. James Kelso (Executive Vice President, Greater Boston Chamber of Commerce) Senate Hearings on S.1201 and S.1681, pp. 322-3. Wendell Freeland (National Urban League) Senate Hearings on S.698, pp. 337-356. Yale Rabin, House Hearings on S.1, pp. 487-493.

> assurance that comparable decent, safe and sanitary replacement will be available for displaced persons prior to displacement....It establishes a uniform policy on real property acquisition practices for all Federal and federally assisted programs. And perhaps most important of all, it gets to the heart of the dislocation problem by providing the means for positive action to increase the available housing supply for displaced low and moderate income families and individuals.[26]

In keeping with Congress' compassionate concern for those displaced by governmental action, persons who qualify for Relocation Act benefits are entitled to:

(1) moving expenses, 42 U.S.C. §4622;

(2) a dislocation allowance of $200, 42 U.S.C. §4622;

(3) relocation assistance, which includes assurance that decent, affordable replacement housing is actually available to the tenants, 42 U.S.C. §4626; and

(4) where the only replacement housing available is at higher than affordable rentals, replacement housing payments to cover the difference (to a limit of $4,000), 42 U.S.C. §4624; 24 C.F.R. §42.95(c).

Thus, if the tenants prevail in their argument that they are displaced persons within the meaning of the Relocation Act they will be entitled to reimbursement for the moving expenses which they incurred when they left Riverhouse, up to $300; a dislocation allowance of $200; and a housing replacement allowance of not more than $4,000. Further, should the tenants prevail, in the future HUD will be required to assure that decent, safe and sanitary replacement housing is available for those being displaced before it decides to evict the residents pursuant to its Property Disposition Program.

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[26] H. Rep. No. 91-1656, 91st Cong., 2d Sess., (1970), p.4, *printed in* 1970 U.S. Code Cong. & Adm. News, 5850, 5852.

II.

THE TENANTS ARE "DISPLACED PERSONS" WITHIN THE MEANING OF THE RELOCATION ACT BECAUSE THEY MOVED FROM RIVERHOUSE TOWERS APARTMENTS AS A RESULT OF A WRITTEN ORDER TO VACATE ISSUED BY HUD'S MANAGEMENT AGENT FOLLOWING ACQUISITION OF RIVERHOUSE BY HUD, AND THE ORDER TO VACATE WAS ISSUED IN CONNECTION WITH HUD'S PROPERTY DISPOSITION PROGRAM.

Eligibility for benefits under the Relocation Act is determined by the definition of "displaced person", which includes:

> ...any person who, on or after January 2, 1971, moves from real property, as a result of the acquisition of such real property, in whole or in part, or as the result of the written order of the acquiring agency to vacate real property, for a program or project undertaken by a Federal agency, or with Federal financial assistance;...

42 U.S.C. §4601(6). Hence, to be entitled to benefits as a "displaced person" under the Relocation Act, a person must be required to move *either* (a) as a result of the acquisition of property for a program or project undertaken by a federal agency or with federal financial assistance ("acquisition clause"); or (b) as a result of a written order by the acquiring agency to vacate real property for a program or project undertaken by a federal agency or with federal financial assistance ("written order clause").

It is axiomatic that where the words chosen by Congress provide a plain meaning, courts need not look beyond those words unless the plain meaning leads to absurd or futile results or is plainly at variance with the policy of the

legislation. *Tennessee Valley Authority v. Hill*,____U.S. ____, 98 S. Ct. 2279 (1978); *Burns v.Alcala*, 420 U.S. 575 (1975); *Richards v. United States*, 369 U.S. 1 (1962); *United States v. American Trucking Assns.*, 310 U.S. 534, 543 (1940). In the instant case, the plain meaning of the Act compels a finding of tenant eligibility for statutory entitlements.

The tenants meet the unambiguous requirements of the written order clause of 42 U.S.C. §4601(6). All tenants moved from their apartments pursuant to written orders issued by HUD's agent shortly after HUD purchased the apartment complex. Further, the orders to vacate were issued in connection with HUD's Property Disposition Program, found in the HUD *Property Disposition Handbook—Multi-family Dispositions* RHM 4315.1 (1971). Thus, the tenants qualify as "displaced persons" under the Act's clear language and are eligible for relocation benefits.

Although the tenants meet the requirements set forth in the statute, the court of appeals denied their eligibility for Relocation Act benefits. In so doing the court augmented the plain language of the Act with concepts which limited and distorted the statute's facial meaning. Relying heavily upon *Caramico v. Sec. of Dept. of Housing and Urban Development*, 509 F. 2d 694 (2d Cir. 1974), the court held that there was no program or project connected with the displacement of the tenants.

> ...[W]e conclude that HUD's written order to the tenants of Riverhouse to vacate by December 31, 1974 was not for...a program or project [undertaken by a Federal agency].

Alexander v. HUD, 555 F. 2d 166, 169 (7th Cir. 1977). However, the reasons employed by the lower court in arriving at this holding unfortunately are not at all clear.

At one point the court intimates that only "voluntary" acquisitions satisfy the Act and that Riverhouse was not acquired voluntarily. *Id.* At another point, it hints that only "construction" projects are encompassed by the Act and that Riverhouse did not involve construction. *Id.* at 169-170, n.3. And finally, it states that it could not see how closing down a project could be part of a program providing public benefits. *Id.* at 170. Significantly, all of this was done without any review of the lengthy legislative history which culminated in the Relocation Act.

In the ensuing arguments, the tenants respond to these various intimations, suggestions and the holding of the court of appeals and to an additional interpretation urged by HUD in its *Brief in Opposition to the Petition for a Writ of Certiorari*. More specifically, we will demonstrate that:

A) Nothing in the Act or its legislative history suggests an inquiry into the voluntariness of acquisitions;

B) The written order clause encompasses both pre-acquisition and post-acquisition displacements; and

C) The Property Disposition Program undertaken by HUD was the program for which the tenants were displaced, rather than the Section 221(d) (3) program erroneously relied upon by the court below.

In doing so, the tenants investigate the legislative history of the Relocation Act, but only to respond to the unsubstantiated alterations argued by HUD and made by the court of appeals. Nothing in that history is at all inconsistent with the plain words and meaning of the statute.

A. THE RELOCATION ACT EXTENDS TO ALL ACQUISITIONS OF REAL PROPERTY BY THE GOVERNMENT.

The written order clause of 42 U.S.C. §4601(6) provides that anyone who moves from real property as the result of the written order of the acquiring agency to vacate real property for a federal program or project is a displaced person. In the instant case, no one disputes that HUD is an "agency" and that HUD "acquired" Riverhouse within the common meaning of that word. No one disputes that HUD, having acquired Riverhouse, served upon each tenant an order to vacate. And no one disputes that the tenants moved from Riverhouse "as a result of" HUD's written order. While the court of appeals does not argue with these facts, it intimates that the tenants fail to meet the spirit of the written order clause because the acquisition which preceded the order to vacate was involuntary. *Alexander v. HUD, supra*, at 169. In this regard, the court relied upon *Caramico v. HUD, supra*, where the Second Circuit found that tenants evicted by a defaulting mortgagee prior to HUD's acquisition were not eligible for Relocation Act benefits.[27]

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[27] In *Caramico*, a non-owner occupants of two-to-four family dwellings were ordered to vacate their homes pursuant to an FHA regulation which required vacant delivery of property by private owners who desired to convey their property to HUD. See, 24 C.F.R. §203.381. The tenants claimed that they were displaced persons within the meaning of the Relocation Act because HUD was the acquiring agency, and HUD imposed the vacant delivery requirement. On its facts, *Caramico* is readily distinguishable. First, HUD was not the mortgagee in *Caramico*. Second, in *Caramico*, HUD did not foreclose the mortgage and did not purchase the property from which the tenants were evicted. Third, there the mortgagee was required to vacate the buildings prior to conveyance to HUD. Fourth, the program for which the tenants were evicted in *Caramico* was the mortgage insurance program, whereas here the program is the HUD property disposition program. Finally, *Caramico* interpreted the acquisition clause, whereas this case rests upon the written order clause.

> Finding a crucial difference between mortgage insurance acquisitions and acquisitions under programs covered by URA, the Second Circuit characterized the former as "random and involuntary while normal urban renewal contemplated a conscius government decision to dislocate some so that an entire area may benefit."
>
> * * *
>
> Although distinguishable with respect to particular facts, Caramico involved the same inquiry as presented by this case, whether the activity of the governmental agency was "for a program or project undertaken by a Federal agency, or with Federal financial assistance."

Alexander v. HUD, supra, at 169. Thus, the Seventh Circuit seems to be holding that absent a voluntary acquisition and program which causes displacement, the tenants cannot meet the initial requisites of the written order clause.

This construction is more fully developed by the dissent in *Cole v. Harris*, 571 F. 2d 590 (D.C. Cir. 1977), *cert. granted*____U.S.____, 98 S. Ct. 3087 (1978). In *Cole*, a case strikingly similar to the instant case, the court held that the tenants were displaced persons within the meaning of the Relocation Act because they were ordered to vacate their apartments by HUD after HUD purchased the complex, and because the orders were issued in connection with HUD's demolition program. The dissent disagreed. Citing with approval HUD's argument that the written order clause was intended only to clarify that the acquisition clause included anticipated but not consummated acquisitions, the dissent states:

> ...HUD is contending that *even as to tenants who seek to qualify as "displaced persons" under the notice category* it is dispositive whether the *acquisition* was *for a project or program*, that is whether the acquisition was made as a voluntary and conscious choice.

Id., at 607 (dissenting opinion). Later, the *Cole* dissent states:

> *This is the basic issue which separates my view from the views of my colleagues; whether the acquisition or the notice clause is involved, the acquisition or notice of proposed acquisition must be an "acquisition for a program or project." There can be no such acquisition if HUD's accession to title is involuntary.*

Id., at 609 (dissenting opinion).

The plain language of the statute, together with the legislative history, refute the proposition that only voluntary acquisitions are covered by the Relocation Act. The statute states that where a person moves as a result of the "written order of the acquiring agency to vacate real property" for a program or project, such person is "displaced" within the meaning of the Act. Nothing in the statute speaks of voluntary or involuntary acquisitions and nothing even suggests an inquiry into the voluntariness of the acquisition. Congress could have said, quite simply, that a displaced person is one who "moves from real property...as the result of the conscious [or voluntary] acquisition of real property...for a program or project." However, the wisdom of its decision not to do so is readily apparent. First , Congress was concerned with the victims of government displacement, and it knew that the effects of displacement on individuals are the same regardless of the

government's state of mind in acquiring the property.[28] Additionally, Congress avoided forseeable administrative problems. For example how is the displaced person to know whether his property is being taken for "voluntary" or "involuntary" reasons?[29] What degree of voluntariness must be present?[30] Who is to determine the presence or degree of voluntariness and by what standards? These obvious problems, particularly when considered in light of Congress' intent that the Relocation Act be evenly and uniformly applied, demonstrate the foresight of Congress' decision not to insert voluntariness of acquisition as a

[28] Where voluntariness might have been a focal concern, Congress focused instead upon victims. For example, very early in deliberations, emphasis was given to the situation of a family which lived adjacent to a town which was wholly acquired by the Army to build the Tuttle Creek Dam. The family was totally dependent upon the town for goods, services and basic subsistence and therefore had to move. The Army, however, neither needed nor acquired their property. The House Judiciary Committee reported favorably on a special bill to provide relief for the family, criticizing this inequity and urging government acquisition and assistance in such situations. The House focused upon this situation, fully and sympathetically explaining it in its *Study of Compensation*, Ch. X, Sec. B(2) (b) (12), pp. 124-126. It focused upon the inequity to the family displaced, and expressed no concern whatsoever that acquisition by the Army would be involuntary or unnecessary or an unanticipated consequence of a previous voluntary project. Simple justice required providing assistance to the displaced family.

[29] Congress was concerned, *inter alia*, with inverse condemnation situations such as where the flight path to and from a government airfield constitutes an avigation easement and where a flood control project condemns less land than is actually needed and waters invade other lands, thereby involuntarily condemning them. *Study of Compensation*, Ch. V, Sec. L, p. 85. Are these acquisitions "involuntary"?

[30] The government had indicated that Riverhouse acquisitions were "more voluntary" than the acquisition in *Cole. Harris v. Cole*, "Reply Memorandum for Petitioners" at p. 3. Such distinctions would create major administrative problems particularly where Congress provides neither a yardstick nor calipers.

criterion of eligibility. And this concept must not be engrafted onto the law at this juncture.

However, assuming *arguendo* that the Relocation Act applies only to displacements connected to voluntary acquisitions, the acquisition of Riverhouse satisfies this requirement. HUD purchased Riverhouse pursuant to Section 207(k) of the National Housing Act, 12 U.S.C. §1713(k), which empowers the Secretary, *inter alia*, to institute foreclosure proceedings against any defaulting mortgagor of a Section 221(d) (3) property and to purchase the property following foreclosure. But it does not require the Secretary to do so.

> *The Secretary at any sale under foreclosure may, in his discretion*...bid any sum up to but no in excess of the total unpaid indebtedness secured by the mortgage, plus taxes, insurance, foreclosure costs, fees, and other expenses, *and may become the purchaser of the property at such sale*. (emphasis added).

Id.[31]

Pursuant to its statutory authority, HUD accepted assignment of the Riverhouse mortgage in July, 1970. during the period 1970-1973, HUD decided to permit the owner to remain in default virtually without penalty, and to operate the project without interference by HUD. During this time, HUD could have brought suit to foreclose the mortgage, petitioned a court to be appointed mortgagee in possession, or asked for the appointment of a receiver to operate the property to prevent its further deterioration.[32] HUD chose none of these options. Finally, in May, 1973, HUD initiated foreclosure proceedings, after which it

[31] Additionally, 12 U.S.C. §1713(g) permits the Secretary to accept assignment of a mortgage in default from the mortgagee in exchange for the mortgage insurance benefits.

[32] See, 12 U.S.C. §1713 *l*; 42 U.S.C. §3535; I.C. 34-1-12-1 *et seq.*

decided *voluntarily* to purchase the property at the Marshal's sale. No regulation or law required HUD to make this purchase.

Indeed, HUD has virtually acknowledged that it purchased Riverhouse voluntarily. Comparing the acquisition of Riverhouse to the acquisition of Sky Tower in *Cole*, the Government states:

> Since the Department had the option of refraining from foreclosure and continuing to suffer the mortgagor's default, the acquisition could be considered "voluntary" in the same sense that respondents [*Cole* tenants] contend the acquisition of Sky Tower was "voluntary." Indeed, since the Department acquired title to the project in *Alexander* through its own action rather than automatically in response to action by the mortgagee, the acquisition in *Alexander* could be said to be even more "voluntary" than the acquisition in...[*Cole*].

Harris v. Cole, "Reply Memorandum for Petitioners", p. 3.

B. THE PURPOSES OF THE RELOCATION ACT ARE SUPPORTED BY APPLYING THE WRITTEN ORDER CLAUSE TO POST-ACQUISITION DISPLACEMENTS.

The central purposes of the Relocation Act are to provide uniform and equitable treatment of persons displaced by governmental action. In spite of the overwhelming evidence of this Congressional intent, and the broad interpretation which it urges, HUD would carve out a large exception to Relocation Act coverage, namely, those displacements which occur subsequent to government acquisition of real property. *See*, HUD *Brief in Opp. to Pet. for Cert.*, pp. 6-7. HUD argues that the written order clause applies *only* to anticipated, but unconsummated, acquisitions of property by the government, and not to

circumstances where the property is owned by the government. This conclusion cannot be supported.

The statute states that a person is displaced if he receives a "written order from the acquiring agency to vacate real property". The ordinary meaning of that phrase envisions a *command* that a resident move. Such a command can only come from the person or agency with legal authority to order property vacated, namely, the owner. A prospective owner might send a letter or otherwise give a "notice" to vacate, but he cannot given an *order* to vacate,within the ordinary meaning of that word. Thus, while it may be appropriate to interpret the written order clause to include instances where notices are issued in advance of acquisition, this interpretation cannot be used to destroy the plain meaning of the words chosen by Congress. Clearly, persons ordered to vacate are to be covered.

HUD's own regulations adopted pursuant to the Relocation Act recognize this. Those regulations define a displaced person to include, *inter alia*, one who is displaced as a result of:

> (1) The obtaining by the acquiring agency of title to or the right to possession of such real property for a project;
>
> (2) The written *order* of the acquiring agency to vacate such property for a project; *or*
>
> (3) The issuance by the acquiring agency of a written notice to the owner of its intent to acquire the real property for such project, in accordance with §42.136 ...(emphasis added)

24 C.F.R. §42.55(e). *Accord:* HUD *Relocation—Policies and Requirements Under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970*, 1371.1

(1975), Chap. 4, Sec. 1 para. 4(a), p. 4-4. Thus, HUD's regulations comport with our reading of the statute. A person is "displaced" within the meaning of the Relocation Act if he moves pursuant either to a written notice issued in anticipation of acquisition *or* to a written order to vacate property following acquisition, for a program or project.

Further, the legislative history does not lead to the conclusion currently argued by HUD. The definition of "displaced" in S.1 as it passed the Senate was amended by the House into the final language of "displaced person" in the Act. The Senate version read:

> §110. The term "displaced", when used in relation to any person, means any person moved or to be moved from real property on or after the effective date of this Act as a result of the acquisition or reasonable expectation of acquisition of such property for a public improvement constructed or developed by or with funds provided in whole or in part by the Federal Government.

The House deleted the "reasonable expectation" language and added the "written order" clause. The only sentence of the House Report which addresses this change states:

> If a person moves as the result of such notice to vacate, it makes no difference whether or not real property actually is acquired.

This suggests that *one* circumstance in which the written order clause applies is where an agency notifies a resident to vacate prior to acquisition. But this is only one possible circumstance among several that would fall within the plain meaning of the added clause. Another situation might be that raised by Rep. Mink where previously acquired surplus Navy property was to be sold and the residents ordered to vacate prior to sale.[33] Such a situation envisions a

[33] House Hearings On S.1, pp. 104-105 (Remarks of Rep. Mink)

sale with no acquisition and only an order to vacate. Another example is where the National Forest Service acquires property through gift or by purchase, and then leases it for a period of time. Later it identifes a specific use for it, cancels the leases, and orders the residents to vacate the land. [34] Again, there would be no acquisition which causes displacement and only an order to vacate.

Other potential examples are numerous. For example, the government may acquire an occupied building for project which is later abandoned. Years later, it decides to use the property as part of a highway and evicts the occupants. Under the analysis set forth by the court below and by HUD, the occupants receive no assistance since the government already owns their homes, whereas all other persons required to move for the highway receive benefits. Additionally, there is the example of a private owner who agrees to convert an apartment building into an office building for lease to the government. In connection with that project, he orders the residents to vacate. Persons are displaced, but no acquisition occurs. The displacees in each of these examples can only be eligible for statutory benefits if they are covered by the written order clause. That they were intended to be covered is evident from the House Report. It cites the situation where the Post Office Department assigns an option to purchase land to the highest bidder, who in turn exercises the option, builds a post office, and leases it to the Department. This, the Report concludes, satisfies the definition of displaced person despite the fact that the property is never acquired by the federal government and the acquisition occurs without federal dollars; and persons displaced for that project are

[34] Hearings Before the Select Subcomm. on Real Property Acquisition of the House Comm. on Public Works, 88th Cong., 2d Sess. (1963), pp. 158-164.

entitled to Relocation Act benefits. As the House Report emphatically warns:

> It makes no difference to a person required to move because of the development of a postal facility which method the postal authorities use to obtain the facility, or who acquires the site or holds the fee title to the property. *Since the end product is the same*, a facility which serves the public and is regarded by the public as a public building, *any person so required to move is a displaced person entitled to the benefits of this legislation.* (emphasis added)

H.R. Rep. No. 1656, 91st Cong., 2d Sess., p. 4 Not coincidentally, the House gives this warning at the precise moment that it decided to alter the statute with the words which HUD would now so parsimoniously construe.

The Riverhouse tenants meet the requirements of the written order clause. Many of them resided in Riverhouse for long periods of time prior to HUD's acquisition and others moved in after acquisition entering into leases directly with HUD. Following acquisition, all remained in their apartments while HUD evaluated the future of Riverhouse. Finally, in November, 1974, HUD determined to vacate the buildings, and in so doing, issued the tenants orders to vacate to make way for its Property Disposition Program, a federal program benefitting the public as a whole.[35] Consistent with Congress' intention that the victims of government caused displacement be covered by the Relocation Act, and consistent with the plain language found in the definition of displaced person, the tenants satisfy the initial requisites of the written order clause.

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[35] The nature of the program and the public benefits flowing therefrom are developed *infra* at p. 34-35.

C. THE TENANTS WERE ORDERED FROM RIVERHOUSE IN CONNECTION WITH HUD'S PROPERTY DISPOSITION PROGRAM, WHICH PROGRAM WAS DISTINCT FROM THE TERMINATED SECTION 221(d)(3) PROGRAM.

The court of appeals acknowledged that neither the text of the Relocation Act nor its legislative history define the terms "program or project". *Alexander v. HUD, supra*, at 169. That language, however, should be read as it is commonly understood. *Burns v. Alcala, supra*, at 580; *Banks v. Chicago Grain Trimmers*, 390 U.S. 459 (1968); *NLRB v. Highland Park Mfg. Co.*, 341 U.S. 322, 324 (1951). The common understanding of "program" is "an outline of work to be done, a prearranged plan of procedure;" and a "project" is "a scheme; a design; a proposal of something intended or devised; an undertaking, as a unit of work done by one of the various governmental agencies." *Webster's New Twentieth Century Dictionary* (2d ed. 1975). Given the common meaning of these words, HUD's Property Disposition Program qualifies as a "progam" within the meaning of the Relocation Act.

Section 207*l* of the National Housing Act, 12 U.S.C. §1713(*l*) grants HUD wide discretion in the acquisition and disposition of multi-family properties insured and subsidized under other provisions of that Act. It permits the Secretary *inter alia*, to "complete, reconstruct, rent, renovate, modernize, insure, make contracts for the management of..., or sell for cash or credit or lease in his discretion, any property acquired by him under this section...." Pursuant to that authority, HUD developed its *Handbook* which sets forth HUD policies and procedures to be followed upon acquisition of such properties. The *Handbook* states, as its general policy, the primary objective:

> . . . to dispose of all acquired multifamily properties at the earliest possible date at the highest price obtainable in the current market. To accomplish this, a *program* for operation, including repairs and/or rehabilitation, shall be determined, whenever possible, prior to acquisition to be approved and initiated as promptly as possible after acquisition. The *program*, determined by the highest and best use of the project, will be formulated and implemented with a view toward leasing the property in a condition to obtain the highest occupancy ratio at maximum rental rates so as to provide the greatest possible return on the Secretary's investment. (emphasis added)

Id., Chap. 2, p. 3.

Most importantly, the *Handbook* acknowledges that the acquisition of property signals a "new phase of operation" where HUD's status shifts from insurer (here mortgagee) to owner, and as owner it becomes intimitately involved in the operation of the project and assumes responsibility for the well-being of the residents.[36] In minute detail, the *Handbook* provides the procedures to be undertaken prior to acquisition[37] and during HUD's ownership,[38] as well as setting forth the method of property disposition. For example, the *Handbook* requires the local HUD office to determine the highest and best use of the project (in the "First Narrative Report"), taking into consideration such factors as the design, utility and facilities of the project; the location and accessibility of transportation, schools, shopping, churches, and medical facilities; and the need for the particular type of housing and on-site facilities in the local area.[39] The local office is instructed to determine the

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[36] *Handbook*, Chap. 3, Sec. 1, p. 7.
[37] *Id.* Chap. 3, pp. 7-15.
[38] *Id.*, Chap. 4. pp. 27-42. Chap. 6, 7 pp. 57-72.
[39] *Id.*, Chap. 3, Sec. 1, p. 7.

needs for continued operation and overall management of the property during ownership by the Secretary,[40] and is to proceed with the retention of a qualified management agent to operate the property.[41] The management agent, in turn, is to evaluate the needed repairs and to request funds to complete them;[42] additionally, the agent is to advertise the availability of units for rental and enter into new leases with existing and new lessees.[43] Further, during the "Program for Property Operation"[44] the local office is instructed to develop a property disposition program for sales offerings.[45] The sale can be made to a private party or a local housing authority,[46] and can be made with new interest and insurance subsidies[47] in connection with sale for a cooperative, condominium, or conventional housing project.[48] All of this is to be accomplished "without undue disruption to occupants"[49] and with the public purpose of obtaining the highest return from the property.[50]

At the time of acquisition of Riverhouse Towers Apartments, HUD embarked upon its Property Disposition Program in accordance with the *Handbook*. It began to evaluate the highest and best use of the property, hired a management agent, entered into new leases and made some repairs to the property. Shortly after acquisition, HUD determined that it was in the best

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[40] *Id.*, Chap. 3, Sec. 3, p. 14.
[41] *Id.*, Chap. 5, pp. 43-56.
[42] *Id.*, Chap. 7, Sec. 2, p. 63; Chap. 10, pp. 95-100.
[43] *Id.*, Chap. 8, Sec. 2, pp. 73-78.
[44] *Id.*, Chap. 7, pp. 63-72.
[45] *Id.*, Chap. 12, pp. 103-115.
[46] *Id.*, Chap. 2, Sec. 2, p. 6-1; Chap. 13, Sec. 1, p. 118.
[47] *Id.*, Chap. 12, Sec. 6, pp. 115-117.
[48] *Id.*, Chap. 12, Sec. 5, 6, pp. 109-115.
[49] *Id.*, Chap. 3, Sec. 3, p. 14.
[50] *Id.*, Chap. 3, Sec. 1, p. 7.

interest of the government to close Riverhouse until it could sell the property.[51] However, it refused to disclose its actual plans with respect to disposition, although it did state that such plans would be submitted after all tenant litigation was resolved.[52] By the time this litigation reached the court of appeals, HUD's plans still remained undisclosed, but HUD announced a new property disposition program found in 24 C.F.R. Part 290.

It is instructive to focus upon these new program requirements. In part they expand prior disposition program considerations; in large part they merely elaborate upon prior considerations and assumptions. But they are particularly instructive because they emphasize the fact that the disposition program is a program unto itself—not just a minimal plan, but a complex plan to be developed by thorough analyses of multiple factors and to accomplish significant public purposes.

The Disposition Program establishes two general public purposes:

> (a) To reduce the inventory of HUD-owned projects in such a manner as to ensure the maximum return to the mortgage insurance funds consistent with the need to preserve and maintain urban residential areas and communities, and to protect the financial interests of the government by obtaining a satisfactory return based on the project's present market value and anticipated future use.
>
> (b) To maintain through a rent subsidy, or otherwise, rents at levels low-to-moderate income families can afford, if the project was intended to serve low-to-moderate income groups.

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[51] *See* HUD's "First Narrative Report," at pp. A44-A47.

[52] *Id.*

24 C.F.R. Part 290.10. In furtherance of these objectives, upon acquisition, HUD is required to consider the feasibility of disposing of the project "with a rental subsidy *program*" by looking to such factors as:

> (1) Whether or not rental subsidy funds can be made available to the project after disposition of the project.
>
> (2) The eligibility for HUD rental subsidy of each eligible tenant in occupancy at acquisition, based upon income recertification.
>
> (3) The availability of comparable (subsidized and unsubsidized) housing or housing assistance programs in the general area.
>
> (4) The feasibility of making available to the eligible tenants comparable (subsidized or unsubsidized) housing or obtaining housing assistance for them.
>
> (5) The availability of rental counseling.

24 C.F.R. Part 290.20. After considering these factors, the regulations require HUD to prepare a disposition recommendation (24 C.F.R. Part 290.30) which includes a physical and financial analysis of the project, an inquiry into the possibilities of transforming the project into a condominium or cooperative, an evaluation of the appropriateness for use of the project as low- to moderate-income housing, and a consideration of whether to demolish the project. Finally, the regulations require HUD to submit a "Final Disposition Program." 24 C.F.R. Part 290.40.

The Property Disposition Program was and is a "program" within the common meaning of that term. The program consisted of the preparation and implementation of a prearranged plan of procedure aimed at fulfiling specific public purposes. It required HUD to make difficult

social and economic analyses of the Riverhouse project. It forced a decision on whether to continue to operate the property in acccordance with the purposes for which it was constructed, or to abandon those purposes. It involved determining whether or not to rehabilitate the property either for sale or for retention by HUD for lease. And it set forth the method and options for sale once the decision to sell was made.

Moreover, the Property Disposition Program was and is a program designed to provide benefits to the public as a whole. Section 207*l* of the National Housing Act, 12 U.S.C. §1713*l*, the underlying authority for the Property Disposition Program, grants HUD wide latitude to rehabilitate and operate multifamily projects such as Riverhouse, so as to achieve the express national policy of realizing "as soon as feasible...the goal of a decent home and a suitable living environment for every American family." 42 U.S.C. §§1441, 1441a; 12 U.S.C. §1201t. At the same time, Section 207 *l* permits the Secretary of HUD to sell property and to return the proceeds from the sale to the General Insurance Fund for reinvestment in other housing programs and projects.

The *Handbook* treats the latter option as the primary objective to be achieved when HUD acquires property. *Handbook*, Chap. 2, p. 5. However suspect this objective may be,[53] it is clear that the public obtains substantial

[53] It is questionable whether that purpose alone comported with the mandate of the National Housing Act, 42 U.S.C. §1441a which requires HUD to exercise its powers consistently with the national housing policy to provide decent, safe and sanitary housing to persons of low to moderate income. *See also, S. Rep. No. 84, 81st Cong., 1st Sess. (1949), printed in* 1949 U.S. Code Cong. & Adm. News, 1550, 1559; *Commonwealth of Pennsylvania v. Lynn*, 501 F. 2d 848 (D.C. Cir. 1974); *Cole v. Harris*, 389 F. Supp. 99 (D.D.C. 1976) *aff'd on other grounds* 571 F. 2d 590 (D.C. Cir. 1977), *cert granted*, ____U.S.____, 98 S. Ct. 3087 (1978).

benefits through its implementation—protection and expansion of the insurance fund and reinvestment in other housing programs designed for the benefit of the public as a whole. Hence, even under the Property Disposition Program in operation when HUD acquired Riverhouse and ordered the tenants to move, the public obtained substantial benefits to the injury of those displaced.[54] Consequently, it was error for the court of appeals to conclude that the tenants were not entitled to Relocation Act benefits because their displacement was not connected to a "program...undertaken by a federal agency to accomplish an objective benefitting the public as a whole." *Alexander v. HUD, supra* at 170.

[54] The new Property Disposition Program, 24 C.F.R. Part 290 under which Riverhouse was sold, even more dramatically demonstrates the benefits which accrue to the public once HUD obtains ownership of the property. That program pursues the public policy of providing decent housing and a suitable living environment for all Americans in accordance with 42 U.S.C. §1441a; and because of that program, HUD may no longer dispose of property without consideration for the policies underlying the National Housing Act. Rather, it must exercise its powers with the express purpose of preserving housing for low to moderate income persons at rents which they can afford, while at the same time protecting the financial interests of the government.

CONCLUSION

The court of appeals' decision must be reversed, for it construed narrowly what Congress intended to be an expansive, humanitarian and remedial statute demanding broad application. It carved out an exception to the statute which is justified neither by the language of the Act, nor by its legislative history, nor by its comprehensive and uniform purpose. Most unfortunately, it permits the very agency which is charged under law to ensure that American citizens are decently housed to close housing while callously ignoring its corollary responsibility to ensure that decent, safe and sanitary replacement housing is available for the displaced residents.

Respectfully submitted,

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ADDENDUM

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

WASHINGTON, D.C. 20410

OFFICE OF GENERAL COUNSEL

IN REPLY REFER TO:

4 SEP 1978

Richard L. Zweig, Esquire
Legal Services Organization of Indiana, Inc.
Investors Trust Building—Suite 390
107 North Pennsylvania Street
Indianapolis, Indiana 46204

Dear Mr. Zweig:

Subject: *Alexander* v. *Department of Housing and Urban Development*, S. Ct. No. 77-874

In response to your inquiry concerning Riverhouse Towers Apartments, we have confirmed the following:

1. This Department advertised the sale of Riverhouse Towers Apartments on May 6, 1977 and held a bid opening on June 8, 1977.
2. On July 13, 1977, the Department entered into a contract of sale with a private party for the sale of Riverhouse Towers Apartments.
3. Following the execution of the contract of sale the Department again evaluated the disposition of Riverhouse Towers Apartments to assure compliance with property disposition regulations which had been adopted on January 27, 1977. 24 C.F.R. Part 290 (rev. April 1, 1977).

4. That evaluation produced a recommendation that the sale of Riverhouse Towers Apartment to the private party proceed, and the sale was consummated on January 30, 1978.

Sincerely,

(signed) James G. Choulas

for

Arthur J. Gang
Associate General Counsel
for Litigation